

Referencing in Academia: Video Essay, Mashup, Copyright

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1. Introduction: Producing and Podcasting Videographic Material

Digital media have established a remix and mashup machine that has generated a rich range of recombinant appropriations (Voigts 2017)—compiled videos, samplings, remixes, reboots, mashups, short clips, and other material involving text, sound, and image—typically found (and lost) on web-based video databases. These remix practices raise questions about referencing and copyright in academic teaching, learning and researching environments that have yet to be fully addressed. Five years ago, in their introduction to *Transgression 2.0*, Ted Gornelos and David Gunkel pointed out that mashup culture tends to operate in a murky, transgressive legal situation:

[...] mashup and remixing are patently and unapologetically illegal. Produced by appropriating, decontextualizing, and recombining the creative material of others, the mashup is a derivative ‘composition’ that violates the metaphysical concept of originality, the cultural status of the author and the authority of authorship, and every aspect of intellectual property law and copyright (Gunkel/ Gornelos 2012: 11).

In this paper, we will provide a tentative view of the current situation that has grown from a teaching project entitled ‘Producing and Podcasting Film Analytical Audio Commentaries’. We will proceed by providing

a short portrait of the project, before focussing on the issues of evaluating and referencing videographic material, remixes and mashups.

The aim of the 'Audio Commentaries' project was to develop student cultural techniques (in German 'Kulturtechniken'). Having received input on the paratexts of films and on how to systematically analyse them, students were instructed on researching, writing and producing their own audio commentaries for movies of their choice (i. e. well-known Hollywood productions). They learned about and applied the techniques of analysing films and assessing, encoding, annotating and producing digital media files. The group reaped the fruits of the teaching project 'Producing and Podcasting Film Audio Commentaries', conducted by Katerina Marshfield and Eckart Voigts, and funded under the umbrella of the 'In Medias Res' programme at TU Braunschweig in 2016. Based on a foundation in film analysis, students assessed a number of trenchant DVD audio commentaries (for instance from the cinephilic Criterion and BFI Collections).

The students then proceeded to script, analyse and produce audio commentaries of their own, following five steps:

I: Listening/Reading: During the first three in-class sessions, students were given various samples of audio commentaries that are part of an audio commentary collection. They were also asked to read a number of articles related to the subject of 'audio commentaries' as ancillary texts. As an outcome, they produced a typology of several audio commentaries.

II: Analysing/Interpreting: Students were asked to encode and analyse films systematically based on the standard texts on film analysis (Bordwell & Thompson 2012, Korte 2003, Monaco 2009). The use of annotation apps and *Interact*, a more complex CAQDA (Computer Assisted/Aided Qualitative Data Analysis) software, allowed students to digitally annotate or even code film sequences for aspects they had isolated as targets in their film analysis. Students created digital notes and anno-

tations, and generated supercuts of selected and coded scenes. It was at this stage that the copyright issues outlined below emerged.

III: Researching and Writing: Students were then asked to research and write their commentaries. In order to prepare them for this task, we arranged a number of expert interviews and talks. A workshop with Marie-Laure Ryan on transmedia narration (18/102016) was recorded, and five experienced audio commentators shared their experience with the students in recorded Q & A sessions: Professor Robert Gordon, PhD (University of Cambridge, UK), Professor John R. Cook, PhD (Glasgow Caledonian University, UK), Professor Dr. Marcus Stiglegger (DEKRA Hochschule für Medien, Berlin), Adrian Martin, PhD (Monash University, Australia, a real time webinar), and Professor Catherine Grant, PhD (University of London).

IV: Producing: During the last production phase, students recorded their film audio commentaries. To ensure high-quality soundtracks, we demonstrated the use of sound recording equipment in one of our in-class sessions. We also produced an explanatory clip on sound quality and working with sound editing software *Audacity*, which was at the students' disposal round the clock on our learning platform.

V: Presenting: Finally, students were asked to introduce and play their commentary to their peers at a 'Student Commentary Day'. Two students, for instance, produced an engaging video essay for Walt Disney's *Frozen*, which we cannot include here for copyright reasons. Although the students created interesting audio commentaries, we never made those podcasts publicly available, because the clips used copyrighted material from the films on which they commented.

The following discussion of referencing in this teaching context is inspired by the two key questions that emerged as major stumbling blocks in this practice-oriented seminar: (a) the lack of established criteria for audiovisual student work, and (b) unclear copyright issues when referencing audiovisual material.

Even though we were aware of the fact that we would be navigating through formally and legally uncharted territories, we were keen to go through with the project for the following reasons: despite the fact that convergence culture (Jenkins 2006, Ryan 2015, Schültzke 2015) increasingly exposes students to multi-modal textuality both in their day-to-day lives and during their studies, there is an ongoing shortage of practice-oriented classes within literary, cultural and media degree programmes in Germany. While researching and teaching how to analyse and interpret diversified semiotic compositions is the primary goal of such programmes, the media used for tuition and the examination formats available at the end of courses overwhelmingly rely on the written or spoken word. Other semiotic modes are used as objects of study, but not as a means of research or teaching and learning.

Meanwhile the linearity of traditional writing focussing on online distribution has been transformed through hypertextual and hyper-medial networks becoming increasingly interwoven. Its production requires a new kind of “multiliteracy” (Hallet 2014), which is rarely part of the creative arsenal of students and tutors of literary, cultural and media studies.

However, *mashups* present an alternative that allows for mixing texts, footage, images and sounds without having to produce substantial semiotic expressions from scratch. For this reason, the mashup has become increasingly important as a multi-channel cultural technique for constituting, exchanging and presenting meanings, ideas and materials (Schültzke 2015: 153) both in amateur media studies and in the emerging professional academic approach to media.

What is fascinating for our work about the current state of the *mashup* genre, is that, while a plethora of material is already available online, it is by and large unhampered by established criteria and norms of production, form or content.

For the reasons outlined above, we decided to support Schültzke’s appeal to turn the media mashup into a “means for analysis and pres-

entation of results” in teaching media studies in an effort to join theory and practice—a kind of criticism in action (2015: 153)

A key inspiration for us was Catherine Grant’s presentation at the Audiovisual Essay Conference organised by the Deutsches Filmmuseum in Frankfurt and Goethe University in November 23–24, 2013, where she argued that mashup videography is creative, critical and performative:

For me, videographic film studies, including audiovisual essays, is creative; I’d say primarily these are creative [forms]. But they are *creative critical* (sometimes I don’t even use a comma to separate those two terms!). Creative, critical, and *performative* film studies practices. Performative because they use the object themselves. They use reframing techniques, remixing techniques, applied to film and moving image excerpts. (Grant 2014)

Our seminar followed the basic tenets of action-oriented media pedagogy with clearly structured hands-on production activities and acts as a building block in the ongoing curricular transformation of teaching media and cultural studies: our methods included opportunities to work in small, independent groups and student-focused learning environments in order to (inductively) develop student competence in digital media. Experiences in hands-on, production-oriented work resulted in ‘authentic’ student communication, while enhancing student knowledge and practical applications of traditional film analysis of visual communication. The focus on products in the context of an aesthetically and culturally minded media pedagogy and the clear emphasis on students’ actions address the four central dimensions of media literacy as outlined by Dieter Baacke since the 1990s: (1) media critique (*Medienkritik*), (2) media knowledge (*Medienkunde*) (3) media usage (*aktive Mediennutzung*) and (4) the creative and innovative production of media formats (*Mediengestaltung*, see Moser 2010: 242).

2. Publishing Videographic Criticism: Handling Hypermodality

Having mentioned the lack of formal criteria for the production of mashups, it is now worth analysing how the existing journals and practitioners handle the two key problems of hypermodal academic text production. In the following sections, we will examine the criteria that do exist for assessing videographic work and the current state of academic referencing in video essays.

On the one hand, there are key video essay sites that offer little more than a meta-index to relevant work in a field that is rapidly evolving. The cinephilic subscription-based viewing service Fandor, for example, offers a blog that links to relevant videographic mashups: <https://www.fandor.com/keyframe/best-video-essays-2016>

On the other hand, there are curated online journals modelled on the practice of academic publishing. Pioneers of video essay compositions, who characteristically transcend the divide between academic and non-academic expert cultures, have created channels showcasing their work, where they also reflect on production aspects. This practice makes the production processes transparent to scholars. One of the most recognised YouTubers in this respect is Evan Pushak and his channel, The Nerdwriter1: <https://www.youtube.com/channel/UCJkMlOu7faDgqh4PfzbpLdg>

Academic film scholars such as Catherine Grant and Jason Mittell have provided excellent videographic clips that blur the lines between research in film studies and creative, poetic work in the case of Catherine Grant, and between scholarship and meta-scholarship.

For instance, Catherine Grant has juxtaposed the David Bowie video for the song “Lazarus” with a clip from Luis Buñuel’s *Los Olvidados*. Grant explains that she made the video as a homage on the day she learnt of David Bowie’s death, clearly taking copyright risks. As she works between the poetic and the scholarly, this homage clip can hardly be called primarily scholarly (and Grant does not make this claim). In the Vimeo paratext, she comments:

I was struck by how the music video LAZARUS (Bowie/Johan Renck, 2016) made me recall the dream sequence in LOS OLVIDADOS (Luis Buñuel, 1950), a film in part about the fragility of flesh, and which constantly foreshadows death as the ineluctable fate of its characters. (Grant 2016)

Jason Mittell's longer video essay discusses a conspiracy theory about meanings hidden in the Spike Jonze/Charlie Kaufman movie *Adaptation*. He comments that his own search for meaning, expressed largely in voiceover, is only half-serious:

My own voiceover takes inspiration from the film, purposely leaving it unclear exactly how much I mean what I'm saying—if Kaufman serves, at least in part, as an unreliable narrator, perhaps I stand as an unreliable critic. That being said, this video is not offered as a “fake” analysis. I believe it provides real insights into the film, albeit in unconventional ways. And as analysis, it speaks for itself. (Mittell 2016a)

The cases of Catherine Grant, Jason Mittell and others such as Adrian Martin illustrate that, frequently, authors, curators, editors and disseminators of videographic works come from a circle of media-savvy experts—but this, we predict, is going to change with the wider dissemination of these compositions and the documentation of best practice regarding their production. In the following section, we will outline some current attempts at defining criteria for producing academic video essays in the widest sense of the word.

Academic sites such as the *Journal of Embodied Research*, an open access journal launched February 8, 2017 on the Open Library of the Humanities (Birkbeck, London, 2013), have gone some way towards establishing criteria for videographic content. Their set of three minimal

requirements includes the dimension of citation and referencing (described in the author guidelines):

- 1) A clearly identified title to distinguish the article within the journal;
- 2) A clearly identified author or list of authors; and
- 3) Continuous time code to allow for stable and accurate citation.

The *Journal of Embodied Research* names the broad multimodal nature of its contents: “video and audio recordings, still images, graphics and animation, voiceovers, textual material and other multimedia forms”. It establishes a number of useful criteria for evaluating videographic material, such as “a clear multimedia design that is appropriate to its content”, and warns against ‘trailer style’: “marked by rapid editing and musical soundtracks to create an effect of intensity”. It also specifies length, both in terms of words and running time: “Research articles should be no more than 20:00 in duration and transcripts should not overrun 8000 words.”

The case of *[in]Transition*, the *Journal of Videographic Film & Moving Image Studies*, raises the problem related to the idea of a ‘journal’ with stable textual boundaries even more, as it collaborates with the video hosting site Vimeo: it is a journal without data. Publication consists in making a password-protected video public:

Contributors should upload their video to Vimeo, preferably to a password protected page, or to Critical Commons, then email the *[in]Transition* editors the relevant URL and password, plus a 25-50-word abstract, a 150-word bio, and a 300-1000-word supporting statement that articulates the research aims and process of the work as well as the ways in which those aims are achieved in the audiovisual form. (“Contribute to *[in]Transition*”)

Interestingly, contributions to this journal are accompanied by two open peer reviews. *[in]Transition* has adapted this unusually open editorial policy from the British journal *Screenworks*. The editorial policies can be explained in a variety of ways: establishing academic recognition through deliberately open review processes, solving technical and financial problems via exterior hosting, accepting a diversity of audiovisual material while contributing to universally accepted norms (according to the emerging sub-fields and disciplinary differentiation).

List of significant sites for video essays in film studies, media studies, anthropology/theatre/dance (in alphabetical order):

- AudioVisual Thinking
<http://www.audiovisualthinking.org/>
- Audiovisualcyc: Videographic Film and Moving Image Studies
<https://vimeo.com/groups/audiovisualcyc>
- Fandor Best Video Essays
<https://www.fandor.com/video-essays>
and the yearly selections:
- Fandor Best Video Essays 2014 ff.
<https://www.fandor.com/keyframe/the-best-video-essays-of-2014>
- Granada Centre for Visual Anthropology
<http://granadacentre.co.uk/>
- *[in]Transition* Journal of Videographic Film & Moving Image Studies
<http://mediacommons.futureofthebook.org/intransition/>
- Journal of Embodied Research (hosted by the Open Library of Humanities).
[http://jer.openlibhums.org/Journal of Visualized Experiments \(JoVE\)](http://jer.openlibhums.org/Journal of Visualized Experiments (JoVE))
<http://www.jove.com/>
- Screenworks
<http://screenworks.org.uk/>

3. Teaching, Researching, and Copyright

The first problem that arose in the context of our teaching project was accessing non-copyrighted film material. In general, all users have to consider whether national and transnational laws are applicable. The principle of national protection determines the scope of applicability of national law (i. e. the law of the country in which the lawsuit is filed). The very terms—copyright law in the USA and ‘Urheberrecht’ (UrhR) in Germany (i. e. law protecting the rights of the originator/author) – illustrate the difference in perspective. In the American context, since the Sonny Bono Copyright Term Extension Act (1998), works made in 1923 or afterwards still protected by copyright in 1998 remain under copyright for 75 years (as opposed to 50 years for works created before 1923). In Germany, § 64 of the copyright law (UrhG) specifies that works remain under copyright protection for 70 years after the author’s death (*post mortem auctoris, pma*). In the case of film this means that post-mortem copyright protection includes the director, screenwriter and composer. There are some well-documented copyright disputes that illustrate the differing interests of academics, fans and copyright holders. A blatant case of copyright holders seeking to profit rather than protect the author’s interests is *Leslie Klinger vs. Conan Doyle Estate*, a case in which the estate unsuccessfully sought to extend copyright on a ‘complex’ literary character (*Klinger vs. CDE 2014*). In this case, fans and enthusiasts profited from a long tradition of high-profile, well-organised fandom that came from high social ranks (Baker Street Irregulars, Baker Street Babes) rather than marginalised and isolated groups. They were also supported by legal advice from the Organization for Transformative Works and Cultures. Activist-author Betsy Rosenblatt argued in 2017 that—contrary to the better founded claims of author Anne Rice to her own work in her well-documented argument against fan fiction—the Conan Doyle Estate had a rather tenuous case: “It is one thing for a fan to heed Anne Rice herself when she asks her fans not to create fan

works and quite another to heed a third cousin once removed who purchased the rights rather than inheriting them” (Rosenblatt 2017).

Another classic case is the copyright status of Alfred Hitchcock films, which were removed from the public domain when they fell under the EU extension to the 70-year-rule. A wiki devoted to the complex legal status of Hitchcock movies illustrates the situation: “Once Directive 93/98/EEC was adopted by the United Kingdom, all of Hitchcock’s British films had their copyright restored and were no longer in the Public Domain. As Hitchcock died in 1980, the copyright term of the films is until at least 2050 (being 70 years after his death). Six of the British films were written by Charles Bennett, so their copyright term is until at least 2065 (being 70 years after Bennett’s death in 1995)” (“Copyright status”).

Maybe the most famous case is the forgotten copyright notice for George Romero’s *Night of the Living Dead*, which can be freely used for academic and other purposes: “copyright, or the lack of it, helped define the zombie genre for what it is and ensure that there were plenty of movies to go around” (Bailey 2011).

The first task for us as university lecturers involved in a video-graphic essay project based in Germany would be to locate audiovisual material that is out of copyright and in the public domain on sites such as www.publicdomainmovies.net or www.pond5.com/free. According to Jessica Litman, the public domain is a sphere not only limited to items undeserving of protection, but, on the contrary, it provides the essential raw material for the creative process (Litman 1990: 968).

Open Access is the preferred condition for the exchange of information in academic contexts. Many journals that publish mashed-up videographic material observe one among a choice of Creative Commons licenses. The *Journal of Embodied Research*, for instance, uses the most open version CC-BY (i.e. Creative Commons plus author attribution, ‘by’) that “lets others distribute, remix, tweak, and build upon

your work, even commercially, as long as they credit you for the original creation” (Creative Commons).

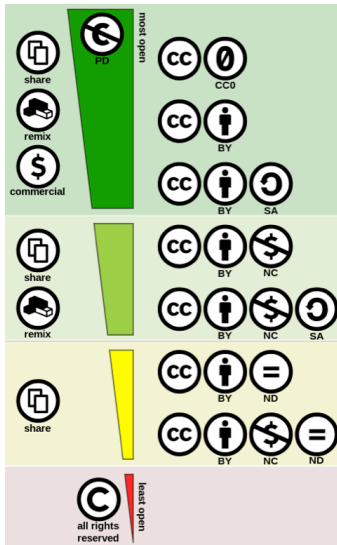


Fig. 1: By Shaddim; original CC license symbols by Creative Commons¹

The Creative Commons license, however, is only of limited use when an academic video essay uses commercially produced material. As German pressure group Rechtaufremix.org comments: “A core characteristic of remix culture is the transformative and creative usage of mainstream cultural artifacts—these in particular are usually not released under a Creative Commons license” (right2remix.org—the English language version of the site). German copyright laws prevent unlicensed remixes, unless the original material becomes indiscernible. According to the highest German court, the Bundesgerichtshof (BGH), the ‘fading’ (*Verblässen*) of the original material, for instance in distorting parodies or in other kinds of transformation, is the key criterion in deciding copyright cases.² This criterion was applied to summaries of literary

texts (in a case involving the literary online magazine *Perlentaucher*) or distortions of celebrity photographs. If we return, for instance, to the case of Catherine Grant's 'homage' "Lazarus/Los Olvidados" the Creative Commons license would by no means cover what she is doing. Grant admits to treading a fine line between an appropriate academic reference and a breach of copyright complicated by (a) the diversity of copyright legislation, and (b) her use of music. Key criteria are the length and appropriateness of the reference as well as the degree of transformation or distortion discernible in the 'citation':

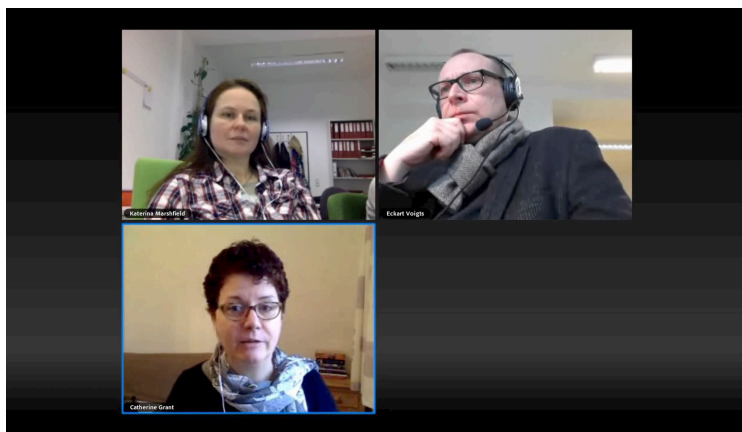


Fig. 2; available at: <https://www001.zimt.uni-siegen.de/ojs/index.php/mia/>

While being aware that the use of music raises particularly tricky copyright questions, Grant points out that the Bowie track was publicly disseminated for promotional purposes and explains that in addition to juxtaposing the clips in split screen she also mixed the soundtracks. This, she argues, is transformative referencing.



Fig. 3; available at: <https://www001.zimt.uni-siegen.de/ojs/index.php/mia/>

Transformation is thus a key criterion in deciding copyright cases. This applies both to German copyright laws, which seek first and foremost to ascertain the rights of an originator, and to the Anglo-American norms of fair use (USA) and fair dealing (e.g. UK, Canada, Australia).³ The emphasis put on the question to what extent a work is transformative raises a peculiar challenge, because, in a stark contrast to that, an academic citation is required to observe the norms of zero transformation. The different norms may be explained by the signposting of origins: in the audiovisual essay, it will be clear that the Bowie video and sound is a consistent quote. This, however, does not apply to all available material. Again, it is elucidating to consult the guidelines in the *Journal of Embodied Research*; they require references both within the video and in an accompanying text document, which must include an abstract, keywords and bibliography:

References and citations must be included within the video article as well as in the required accompanying document described below. The Harvard system of referencing should be used and a complete

bibliography should appear at the end of the video. Additionally, authors can choose to make reference to that list using author/date citations or to include ‘footnotes’ with citation information throughout the video. (“Author Guidelines”)

In addition, the editors welcome a transcript and/or detailed description of the video—thus, compared to a text-only essay, a videographic essay clearly requires more time and care.

Copyright laws in Germany, the UK and the USA differ widely, for instance with respect to the previously mentioned norms of fair use and fair dealing. In a legal expertise prepared for the German Associations of Historians and Media Studies (Verband der Historiker und Historikerinnen Deutschlands, VHD; Gesellschaft für Medienwissenschaft, GfM), the authors explain that, as a rule, mashups and remixes are unequivocally illegal in Germany (Klimpel/König 2015: 24–25, see also Klimpel/Weitzmann 2015). On the other hand, in the ongoing legal battle between the band Kraftwerk and music producer Moses Pelham, the German Federal Constitutional Court (Bundesverfassungsgericht) decided that the specific situation within the art form has to be considered. The court argued that, as the practice of sampling has been long established in Hip Hop, it should be protected as artistic expression.⁴

What is the current legal situation with respect to the ‘ripping’ of a DVD for purposes of research and education? Legal norms seem to vary from country to country. Some provide for the legal preparation of private back-up copies. In Germany, however, the ripping of a DVD even without the intention to ever re-publish material is illegal, and thus raises doubts about practices that might be essential in the context of our project outlined above. The reason for ‘ripping’ is irrelevant, even if it is to quote from a movie.⁵ It does not matter if the DVD was purchased and just copied to back it up, or if the audiovisual material is not intended for further use or redistribution. It is forbidden for students or staff alike to circumvent the copy protection on the medium it-

self for any reason. The right to prepare a ‘back-up copy’ for private use, which exists in some countries, does not necessarily imply that a copy protection (DRM: Digital Rights Management) can be circumvented. This is why we required the students to prepare their commentaries in our project as audio files only (without the vision track of the original source film).

The situation is different in the USA, where, according to Jason Mittell, ripping is legal (albeit discouraged by university administration for fear of litigation) after the Library of Congress allowed exemptions from the Digital Millennium Copyright Act (DMCA): “it is no longer illegal to ‘rip’ a DVD or Blu-ray in order to create videographic criticism, regardless of fair use ruling” (Mittell 2016b).

However, fear of litigation clearly hampers much academic work — not just in the world of videographic criticism. As the following letter — which was sent to Eckart Voigts by a British journal editor in a private e-mail in 2016 — suggests, even with written material the question of what constitutes fair use of a ‘quotation’ or ‘citation’ can make academics wary, even in the world dominated by ‘fair dealing’ provisions:⁶

This relates to the issue of quoting from [X’s] play. If you consult the explicit copyright restriction specified in the inside front cover of the published version of her play, you will see that it does not acknowledge any ‘fair dealing/fair use’, insisting even on permissions being obtained for conducting readings of the play in a classroom environment (!!). You actually cite quite extensively from the play, namely a total of 286 words.

By way of comparison, my own chapter in the collection also cites from a play, though slightly more (just over 350 words), for which the playwright’s agents have demanded £250.00 — we are still ironing out the details, as that was going to be for a 400 print-run only, with further payments thereafter... So you really don’t want to fall foul of copyright law, as the publisher and agents I’ve spoken to seem

to hold that, strictly speaking, there are no fair dealing rules with regards to plays (so too in the case of poetry, incidentally) and each case is assessed on an individual basis.

So I would propose the following. [...], you will find contact details for [X's] agent and publisher, as well as a draft email to request copyright permission. If a) they don't get back to you fairly quickly, i.e. by the time we finalise the rest of the chapter proofs in the coming fortnight, or b) the permission cost proves prohibitive, then we replace the direct quotes from the play with paraphrase. [...] and we'd then add a footnote to the effect that "Regrettably, copyright restrictions and prohibitive permission costs have made it impossible to quote directly from [X's] play."

In contrast to the narrow legal boundaries to video essaying in Germany, in the USA, the publication of videographic criticism is widely covered by the principles of fair use and copyright cases are rare, as Mittell (2016b) clarifies in a useful summary that we have condensed to a set of bullet points:

- "Within the United States, most videographic criticism falls squarely under the provisions of fair use, allowing you to reuse copyrighted materials without permission, with some important exceptions. Fair use is vague by design, requiring a judgment call (by a judge in court) as to whether it violates copyright law based on four interrelated factors: the *nature of the use*, the *nature of the copyrighted work*, the *extent* of the original being used, and the *impact* the use might have on the *market value* of the original." [my emphasis]
- As of 2015, only one case involving videographic work or video remix has yielded a legal ruling (and it was determined to be fair use).
- Problems may occur on standard video hosting sites and with music (as in the publicised case of prominent videographic critic Kevin B. Lee versus YouTube).

- The risks for posting a video using unauthorised copyrighted material are quite low (takedown request or cease-and-desist letters) due to potentially negative press coverage and reputation damage.
- There are alternatives to YouTube et al.: CriticalCommons.org is a non-profit site designed for academics that advocates fair use and has no automated takedown system (Mittell 2016b).

We have highlighted the most important criteria: audio essays should make clear that the citation is necessary for building knowledge and making an argument rather than for financial gains of the remixer/masher, it should be relevant to the issue at hand and neither be excessive in duration nor interfere with the financial interests of the copyright owner.

Conclusion

In conclusion, the murky legal situation, which is particularly restrictive in the EU and Germany, should lead academics to unequivocally support the activities of organisations such as the Organization for Transformative Works and Cultures, OTW, (in the Anglo-American world) and iRights.info or rechtaufremix.org (in the German-speaking world). Apart from attempts to influence copyright policy, OTW legal advocacy includes help with obtaining an exemption to the U.S. DMCA and filing Amicus Curiae briefs in cases regarding U.S. copyright law, fair use, and online freedom of expression. In Germany, since 2013, rechtaufremix.org has sought to establish an equivalent to the American fair use principle, which would supplant the strict copyright protection with subsequent statutory exceptions (*Schrankenregelungen*). Rechtaufremix.org thus campaigns for changes in the European Copyright Directive, additions of bagatelle clauses, a remix exception, expanded citation rights under German law, and so forth. In the current legal situation, it might be best not to announce screenings in class and never ask how students or colleagues obtained the material they are us-

ing, as an unnamed colleague suggested to us.⁷ We as cultural scholars will have to remain vigilant and proactive in representing our interests, as even the new German copyright law with special reference to science and academia (the UrhWissG, which will take effect in March 2018) does not allow for altering original ‘cited’ content, neither for research nor for teaching purposes. It does, however, provide for the use of 15% of a given ‘work’ in contexts of scientific teaching and research and allows data mining.

Notes

- 1 <https://creativecommons.org/policies/Original-CC-license-icons> licensed under CC BY 4.0, CC BY 4.0, <https://commons.wikimedia.org/w/index.php?curid=47247325>
- 2 “Erst wenn sich der Remix so weit von den verwendeten Ausgangswerken entfernt, dass ‘deren individuelle Züge nicht mehr durchschimmern’, so die vereinfachte Formel, verlässt man den Bereich der Bearbeitung und befindet sich in der sogenannten freien Benutzung. Erst dann ist der Ersteller des Remix als Urheber allein entscheidungsbefugt und nicht mehr im selben Boot mit den Urhebern verwendeter vorbestehender Werke.” (Klimpel/Weitzmann 2015). [Only when the remix is so different from the original works used that ‘their individual characteristics no longer shine through’, if we want to put it into a simplified formula, the use is no longer considered as editing, but has entered the domain of free use. It
- is only then that the author of the remix as the originator is solely entitled to decide and is no longer in the same boat with the authors of the pre-existing works used.]
- 3 Fair use provides for exceptions of copyright protection for areas such as teaching, scholarship, or research. Fair dealing, predominantly in countries whose legal system is influenced by the Commonwealth of Nations, is a less general exemption from infringement of copyright, but also applies to education, criticism, scholarship and research.
- 4 The ruling of the constitutional court relied on pop-musicological research on hip hop, which is commendable for further legislation: “Der Einsatz von Samples ist eines der stilprägenden Elemente des Hip-Hop. Der direkte Zugriff auf das Originaltondokument ist – ähnlich wie bei der Kunstform der Collage – Mittel zur ‘ästhetischen

Reformulierung des kollektiven Gedächtnisses kultureller Gemeinschaften' (Großmann, Die Geburt des Pop aus dem Geist der phonographischen Reproduktion, in: Bielefeldt/Dahmen/ders., PopMusicology. Perspektiven der Popmusikwissenschaft, 2008, S. 119 <127>) und wesentliches Element eines experimentell synthetisierenden Schaffensprozesses. Die erforderliche kunstspezifische Betrachtung verlangt, diese genrespezifischen Aspekte nicht unberücksichtigt zu lassen" (BVerfG 2016). [The use of samples is one of the characteristic style elements of hip hop. The direct use of the original audio document is—similar to the art form of collage—a means to 'aesthetically rephrase cultural communities' collective memory' (Großmann) and an essential element of a creative process based on experimental synthesization. An art-specific approach requires these genre-specific aspects to be taken into account.]

5 "DVDs sind meist mit technischen Schutzmaßnahmen, d.h. einem Kopierschutz, versehen. Diese Schutzmaßnahmen dürfen nach der geltenden Rechtslage auch nicht zum Zweck des Zitierens umgangen werden. [...] Dies ist problematisch, da damit die vom Zitatrecht bezweckte geistige Auseinandersetzung bei bestimmten Werkformen wie insbesondere Filmen unterminiert wird. [...] In der Praxis ist allerdings fraglich, ob eine Rechtsverletzung, bei der technische Schutz-

maßnahmen im Rahmen eines Zitats umgangen werden, auch geahndet wird" (Klimpel/König 2015: 56). [DVDs are usually provided with safeguards, i.e. copy protection. Under the current law, it is forbidden to circumvent these safeguards even for the purpose of citations. [...] This is a problem, because this provision undermines the intellectual discussion intended by the right of citation in certain forms of works such as film in particular. [...] It is doubtful, however, if an infringement that consists in circumventing technical safeguards in the context of a citation, will be prosecuted in practice.]

6 A web page published by the British Library usefully explains that 'fair dealing' provisions are always "matters of degree and interpretation", which goes a long way towards explaining the fears articulated below.

7 "Vielleicht noch ein Praxistipp: bei den Videoessayseminaren hat der Dozent die Quelle immer schon mitgebracht. Ich habe nie daran gedacht ihn zu fragen, wie er daran gelangt ist. Aber soweit ich weiß, hat er auch nie eine Anleitung zum Rippen von DVDs gegeben, wäre ja auch illegal ..." [One practical tip: in the video essay courses, our lecturer always provided the source. I never thought of asking him how he had obtained it. As far as I know, he also never provided guidance on how to rip DVDs. That would be illegal anyway...]

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